1951.

File No. O. Forest

Legal Department

A BRANCH

Subject:—

Opinions under the

Indian Forest Act, 1927

File No. O - Forest / 51

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1317

K.S.R.
1317

Legal Department.

Declaration of forest areas in merged States as reserved and protected. Indian Forest Act, 1927.

It appears that some of the merged States had adopted the Indian Forests Act, 1927 or some other Law as the State forest law but in others one such law existed but still forest areas were classed as reserved and protected. The points raised by the Chief Conservator of Forests are:-

(1) whether fresh notifications under the Indian Forest Act are necessary in cases where the notifications made under the State Forest Act are not forthcoming;

(2) whether fresh notifications under the Indian Forest Act are necessary in cases where no notifications were issued though the States had made the Indian Forest Act applicable.

A. & F.D. is of the view that fresh notifications under the Indian Forest Act are necessary. The R.L.A. is requested to advise.

2. A. & F.D. should first ascertain whether the Indian Forest Act, 1927 or some other forest law was adopted and was in force in a State before it was merged in the Bombay State, of any forest law was in force whether the notifications issued under the said law would be consistent with the Indian Forest Act. (See section 3 of the Merged States (Laws) Act, 1950). But if no such law existed in the State before its merger or if the notifications issued are not consistent with the provisions of the Indian Forest Act, 1927, it would be necessary to issue notifications declaring the forest area as reserved or protected. If notifications issued in the States under the law are not forthcoming it would be necessary to issue such notifications afresh because in the absence of any such notification it would be difficult to prove that these

particular areas have been so declared. Merely by application of the Indian Forests Act by certain States before merger the forest areas do not automatically become reserved and protected areas. If no notifications have been issued these areas as reserved and protected it would be necessary to do so now.

Id/- (J.R.D.)

Additional Secretary to Government.

U.R. to A. & F.D.No.3039,dated the 17th February 1951.

R.D.P.
4/7/56

S.C.

No.5320.
Legal Department,
Bombay Castle (BOMBAY No.1) 3rd April 1951.

To

The Conservator of Forests,
Central Circle,
Poona.

Through

The Secretary to Government,
Agriculture and Forest Department.

Subject:- Forest offence cases. whether admission of an offence by accused before D.F.O. admissible under section 72(2) of the I.F.A. in a subsequent trial before a Magistrate.

With reference to your letter No XVIII-41-10426, dated the 14th February 1951, on the above subject, I have the honour to state that Clause (d) sub-section (1) of section 72 of the Indian Forest Act, 1927 empowers the State Government to invest any forest-officer with power to hold an inquiry into forest offences, and, in the course of such inquiry, to receive and record evidence. Sub-section (2) provides that any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial b before a Magistrate, provided that it has been taken in the presence of the accused person. Attention however is invited to R.L.A.Is opinion No. 1307, dated the 4th March 1933 and No.358-A/II dated the 25th October 1939 (printed at page 2 & 38 of the Forest Manual Vol. II 2nd Edition) from which it appears that forest officers who are empowered to inquire into forest offences under section 72 of the Indian Forest Act can be considered to be police officers for the purpose of section 25 of the Indian Evidence Act. Consequently confessions made before the forest officers like the D.F.O's would be inadmissible in evidence before a Magistrate in a subsequent

~~subsequent~~ trial.

2. The Conservator of Forests, Central Circle is not entitled to make any direct reference to the R.L.A. for opinion (Please see Rule 20 of the Law Officers Rules) and if he had any legal difficulty he should have referred the point to the R.L.A. through the Administrative Department.

Id/-

Additional Secretary to Government.

R.D.P.
4/7/56

S.C.

L.D.R.I.No.7838/51.

dt.16/4/51.

Submitted with reference to A. & F.D. Note dated the ~~18th~~ 12th April 1951.

Some ~~x~~ of the private forests, which are proposed to be taken over, under Govt. management are owned by more than one person. Notices are to be given to the owners of forests under Section 35(3) of the Indian Forests Act, in form No. I appended to the Rules framed for carrying out the provisions of Chapter V of the I.F.Act, 1927. The question is whether separate notices are required to be served on each of such joint owners. This department was informally consulted in the matter when it advised that it ~~x~~ is desirable to issue separate notices to the joint holders in respect of their shares in the Forests lands.

R.D.P.
4/7/51

S.C.

Legal Department.

The names of all sharers should be xx mentioned in the notice in Form I appended to the Rules at page 161 ante and the notice xhxx should be served separately on such sharer.

Id/-

Additional Secretary to Government.

U.R. to A. & F.D.No,8073,dated the 22nd May 1951.

R.D.P.
4/7/56

S.C.

Office of the R.L.A.

Indian Forest Act, 1927 as amended by Bombay Act No.LXII 1948. Sec. 36(1)

Chapter V of the Indian Forests Act, 1927 provides for the control over forests and lands not being the property of Government. Under section 35, sub-section (1) of that Chapter, as amended by Bombay Act LXII of 1948, Government may by notification in the official Gazette, regulate or prohibit in any private forests, certain acts, including cutting and removal of trees as provided in that sub-section. The Act however does not prescribe any penalty for the breach of any such regulation or prohibition. But under section 36, sub-section(1), in case of neglect or wilful disobedience of such regulation or prohibition under section 35, the Government can, after notice in writing to the owner of such forest, and after considering his objection, if any, place the same under control of the forest officer, and may declare that any or all of the provisions of the Act relating to reserved or protected forests shall apply to such forest. It will be open to Government to issue a notification prohibiting cutting of trees under section 35(1) in the private forests, even though there may be contracts between the owners of such forests and merchants in existence at the date of such notification. If after such prohibition under Section 35(1) the owners or contractors remove the trees it would amount to neglect or wilful disobedience within the meaning of section 36(2(1), and it would be competent for Government, after notice in writing to the owner of such forest, to assume management of the forest. Under section 36(2) the the net profits arising from such management will be payable to the owner. Only in case of such a prohibition under section 35(1) the contracts

would become void due to the acts agreed to , the contracts becoming unlawful (See sec.56 of the Indian Contract Act). The owners in the case of such void contracts would be under a legal obligation to restore any advantage they may have received under the contracts or to make compensation for it. (See section 65 of the Indian Contract Act). But as pointed out above the existence of such contracts would be no bar to Government taking action under section 35 of the Act.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to A. & F.D.No.8850,dated the 15th June 1951.

R.D.P.
4/7/56

S.C.

Legal Department.

There would be no objection to serving a notice under section 35(3) of the Indian Forest Act, 1927, on the guardian of the minor owners of the forests provided such guardian is a natural guardian or is validly appointed by Court.

Id/-

Additional Secretary to Government.

U.R. to A.& F.D.No.10277,dated the 29th June 1951.

R.D.P.
4/7/51

S.C.

Legal Department.

Indian Forest Act, 1927.
Section 35.
Notice to D.M. as trustee - whether in order.

"In legal theory, a trustee is not a mere agent but an owner. He is a person to whom the property of some one else is fictitiously attributed by law, to the extent that the rights and powers thus vested in a nominal owner shall be sued by him on behalf of the real owner. The trustee is clothed with the rights of his beneficiary, and is so enable to personate or represent him in dealing with the world at large." (Salmond on Jurisprudence p.360). A trustee being t the legal owner of the properties a notice will have to be given to him. A notice therefore to the D.M. in his capacity as a trustee will be in order. If there are more than one trustee a notice will have to b be served on all such trustees.

Id/-

Additional Secretary to Government.

D.M. to A. & F.D.No.13800,

dated the 28th August 195

R.D.P.
4/7/56

S.C.

Legal Department.

The question for consideration is whether a forest offence case which is compoundable under section 68 of the Indian Forest Act (XVI of 1927) can be so compounded and the pending prosecution in respect of it can be withdrawn with the permission of the Court although the accused has already admitted his guilt before the Court.

2. The answer is that it can be, provided no final order in the case has been passed by the Magistrate. The offence which is compoundable under section 68 of the Indian Forest Act, 1927, is a summons case. In a summons case when the accused comes before the Court the Magistrate has to inform him of the particulars of the offence of which he is accused and to ask him to show cause why he should not be convicted (section 242,Criminal Procedure Code). If he admits his guilt the Magistrate may or may not convict him on that admission (section 243). If the Magistrate convicts him on that admission it would be a final order and thereafter the complaint cannot be withdrawn. At any time before a final order is passed a complaint can be withdrawn provided the complainant satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw and the Magistrate permits him to withdraw (section 248). Therefore so long as no final order has been passed by the Magistrate, the mere fact that the accused has admitted his guilt does not prevent the Forest Officer from withdrawing the complaint with the permission of the Court and compounding the offence under section 68 of the Indian Forest Act.

Id/-

Additional Secretary to Government.

U.R. to A. & F.D.No.15612,dated the 1st October 1951.

R.D.P./ 4-7-56

S.C.

Legal Department.

The contractor cannot be legally prevented or prohibited from cutting trees in private ~~fxxxx~~ forest unless a notification to that effect has been made by Government under section 35(1) of the Indian Forests Act, 1927. Notice to the owner of a private forest under section 35(3) ~~is~~ is a condition precedent to a ~~x~~ notification under section 35(1). The mere fact that such a notice has been given to the ~~x~~ owner of the private forest would not ~~x~~ justify prohibiting the contractor from working the contract until a notification under section 35(1) is actually made by Government.

Id/-

Additional Secretary to Government.

U.O. to A. & F.D.No.15597,
dated the 1st October 1951.

R.D.P.
4/7/56

S.C.

Legal Department.

The form in which the notice under section 35(3) of the Indian Forest Act, 1927 was sent to the Maharana of Alwar has been prescribed by the rules made by the State Government under section 76 of the Act (vide G.N., A. & F.D.No. 5133/4851-3-J, dated 19-9-1950). In order to comply with the statutory requirements it was therefore necessary to issue the notice in that form. However as stated by the P. & S.D. there would have been no objection to forwarding the notice to the Maharana with a covering D. O. letter.

Id/-

Additional Secretary to Government.

U.R. to P. & S.D.No.17285,
dated the 31st November 1951.

R.D.P.
4/7/56

L.C.

Office of the R.L.A.

The following three question are raised for the R.L.A.'s consideration:-

(1) Whether private forests forming part of Jaghir or Inam villages can be taken over by Government for management under section 36(1) of the Indian Forest Act, 1927, irrespective of the terms of the grant;

(2) Whether it is necessary to indicate the purpose for which the State intends to issue a notification under section 35(1); and

(3) Whether the prohibitions referred to in section 35 are in violation of the fundamental legitimate rights guaranteed by the Constitution of India?

Question No.(1): Under section 36 of the Indian Forest Act, 1927, Government has power to assume management of private forests in case of neglect of, or wilful disobedience to, any regulation or prohibition made uhde section 35. The provision of the Act are wide enough to cover even private forests forming part of Jaghir or Inams villages irrespective of the terms on which such Jaghirs or Inams have been granted by Government. The assumption of management under this provision is also intended for the benefit of the holder of the forest. For section 36(2) provides that the net profits, if any, arising from the management of such forest or land shall be paid to the owner. The assumption of management by Government of forest under section 36(1) may be challenged under Article 31(20 of the Constitution on the ground that the owner of the forest is dispossessed without any provision for compensation. But clause (5)(a) of that Article provides that nothing in clause (2) shall affect the provisions of any existing law other than a law to which the provisions of clause (6) apply. The Indian Forests Act, 1927 is not a law to which the provisions of clause (6) apply. Consequently, it is an existing law and as such article 31(2) of the Constitu-

Constitution would not be attracted.

Question No. (2):- Various clauses of sub-section (1) of section 35 of the Indian Forest Act specify the purpose for which regulation or prohibition can be ordered by Government. It is, therefore, apparent that the particular purpose or purposes for which the State intends to issue a notification under section 35(1) will have to be indicated.

Question No. (3):- Article 19(1)(f) of the Constitution provides that all citizens shall have the right to acquire, hold and dispose of property. Clause (5) of that Article however provides that nothing in sub-xx clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as in imposes, or prevent the State from making any xfxkkxxxright law imposing reasonable restrictions or the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. The prohibitions or regulations that can be imposed under Section 35(1) of the Indian Forest Act, are intended for conservation of private forests in the interests of the general public. Consequently, these prohibitions would not be in violation of the fundamental rights and they would be saved by clause (5) of Article 19 of the Constitution. Apart from this the provisions in the Indian Forest Act, 1927 do not offend against Article 19(1)(f) of the Constitution as they provide for the payment of the xx net profits to the owner of the land.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to A. & F.D.No.16125, dated the 10th October, 1951.

R.D.P.
4/7/52

S.C.